

Message Text

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LIMDIS

E.O. 11652: GDS

TAGS: MARR, RP

SUBJECT: MILITARY BASE NEGOTIATIONS

REF: STATE 37513

1. APPRECIATE QUERIES AND SUGGESTED REFINEMENTS PROVIDED IN REFTEL. THE FOLLOWING COMMENTS ARE KEYED TO THE PARAGRAPHS IN REFTEL:

2. PARA 2A (MUTUAL DEFENSE BOARD, ANNEX E, PARA I-A):

REFERENCE TO U.S. MABASSADOR IS DELIBERATE AND FOLLOWS PATTERN SET IN (A) 1960 EXCHANGE OF NOTES WITH JAPAN ESTABLISHING THE SECURITY CONSULTATIVE COMMITTEE, AND (B) ANNEX TO 1970 SPANISH FRIENDSHIP AND COOPERATION AGREEMENT ESTABLISHING THE JOINT COMMITTEE. GIVEN THE KEY OPERATIONAL IMPORTANCE OF THE MUTUAL DEFENSE BOARD UNDER THE TERMS OF THE PROPOSED NEW AGREEMENT, WE BELIEVE IT USEFUL TO STIPULATE CLEARLY THE ACTUAL WORKING LEADERSHIP OF THE MDB, AVOIDING THE USUAL DIPLOMATIC PARAPHANELIA OF CEREMONIAL LEADERS, DESIGNEES, ETC. IF THE GOP HAS PROBLEMS WITH THIS APPROACH, WE WOULD HAVE NO OBJECTION TO FALLING BACK TO STANDARD FORMULATION CITED IN REFTEL.

3. PARA 2B (ARTICLE III, FINAL SENTENCE):

CONCUR IN PROPOSED CHANGE WHICH CLEARLY IMPROVES

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HARMONY IN THE DOCUMENT.

4. PARA 2C (ARTICLE III, ANNEX E, PARA IB(2)(A)):

THE UNITED STATES MILITARY REPRESENTATIVE OF THE COUNCIL IS TO BE THE SAME PERSON AS THE MILITARY ADVISER TO THE UNITED STATES CO-CHAIRMAN. SUGGEST THIS BE CLARIFIED BY SUBSTITUTING "REPRESENTATIVE" WITH "ADVISER" IN THAT SENTENCE.

5. PARA 2D (ANNEX E, PARA I-I):

CONCUR THAT "THEIR RESPECTIVE GOVERNMENTS" WOULD BE BETTER SUBSTITUTED BY "COUNCIL OF MINISTERS".

6. PARA 3 (ARTICLE IV, PROCEDURAL ANNEX I - DEFINITIONS):

EMBASSY UTILIZED DEFINITION OF "CIVILIAN EMPLOYEES" AND "OTHER CIVILIAN EMPLOYEES" IN 1970 SPANISH AGREEMENT. HOWEVER, EMBASSY RECOGNIZES PROBLEM CITED AND BELIEVES DIFFICULTY CAN BE OVERCOME BY DELETING DEFINITION OF "CIVILIAN EMPLOYEES" AND "OTHER CIVILIAN EMPLOYEES" IN PARAS 2 AND 3 OF PROCEDURAL ANNEX I AND INSERTING INSTEAD AN OVERALL DEFINITION FOR "CIVILIAN COMPONENT" SIMILAR TO THAT FOUND IN JAPANESE AND OTHER SOFA AGREEMENTS. EMBASSY PROPOSES FOLLOWING WORKING:

"3. CIVILIAN COMPONENT: THIS TERM MEANS CIVILIAN PERSONS WHO ARE NATIONALS OR ORDINARILY RESIDENTS IN THE UNITED STATES WHO ARE IN THE EMPLOY OF, CONNECTED WITH OR ACCOMPANYING THE U.S. FORCES IN THE REPUBLIC OF THE PHILIPPINES BUT EXCLUDING CONTRACTORS WHO ARE DEFINED IN PARA 4 BELOW AND PERSONS WHO ARE ORDINARILY RESIDENTS IN THE REPUBLIC OF THE PHILIPPINES."
DEFINITION OF U.S. CONTRACTORS THEN WOULD BECOME PARA 4. DEFINITION OF DEPENDENTS WOULD REMAIN PARA 5. THE USE OF THE TERM "CIVILIAN COMPONENT" WOULD ALSO BE MORE IN LINE WITH PROCEDURAL ANNEX II, CRIMINAL JURISDICTION.

WE WOULD PREFER TO AVOID PROVIDING SPECIFIC DEFINITIONS FOR TECHNICAL REPRESENTATIVES AND CONCESSIONNAIRES IN ORDER TO AVOID FOCUSING GOP ATTENTION ON THESE CATEGORIES OF PEOPLE.

BY WAY OF FURTHER IMPORVEMENT TO CLARIFY DEFINITION
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OF "MILITARY PERSONNEL", WE RECOMMEND INSERTING AFTER THE WORD "DUTIES" IN FIRST SENTENCE, PARA 2, ANNEX I THE PARENTHETICAL PHRASE "(EXCEPT THOSE MILITARY PERSONNEL ATTACHED TO THE UNITED STATES EMBASSY)".

7. (ARTICLE IV, PROCEDURAL ANNEX III, SUBPARA 6 - IMMIGRATION):

THE UNNUMBERED DEPARTMENT NOTES REFERRED TO ARE

FROM THE PHILIPPINE DEPARTMENT OF FOREIGN AFFAIRS. EMBASSY COPIES OF SUBJECT NOTED HAVE NO NUMBERS AND ONLY REFERENCE POINT IS TO DATES THEY CARRY. RECOMMEND THAT THE WORDS "DEPARTMENT OF FOREIGN AFFAIRS" BE INSERTED IN LIEU OF THE WORD "DEPARTMENT'S". ALSO "1969" IS A TYPOGRAPHICAL ERROR AND SHOULD READ "1961".

8. PARA 5 (ARTICLE IV, PROCEDURAL ANNEX V - SERVICES):

EVEN THOUGH PRESENT AGREEMENT HAS NO SPECIFIC PROVISIONS FOR RADIO, TV, NEWSPAPERS OR SCHOOLS, EMBASSY BELIEVES IT IMPORTANT TO SPELL OUT UNITED STATES GOVERNMENT RIGHTS IN THESE AREAS. GOP IS EXPERT AT NARROWLY DEFINING PRIVILEGES GRANTED UNDER MBA. WHEN GOP DOES FOCUS ON THE ABOVE AREAS, WE COULD HAVE PROBLEMS IF WE DON'T ALREADY HAVE SPECIFIC PROVISIONS. IT IS VERY LIKELY THAT IN FUTURE GOP WILL LOOK TO TIGHTEN REGULATION AND CONTROL IN THESE AREAS TO REFLECT ITS CONCERN FOR SOVEREIGNTY. THE GOP ASKED QUESTIONS IN 1975 ABOUT RADIO AND TV OPERATIONS AT THE BASES. THE ISSUE HAS NOT BEEN FORMALLY PURSUED SINCE THAT TIME BUT IT IS NOT FAR BELOW SURFACE. EMBASSY INSERTED REFERENCES TO NEWSPAPERS IN PARA 1, PROCEDURAL ANNEX V IN ORDER TO INSURE THE RIGHT TO PUBLISH AND DISTRIBUTE BASE NEWSPAPERS AS WELL AS DISTRIBUTE STARS & STRIPES. AT VARIOUS TIMES IN LAST FEW YEARS, EMBASSY HAS RECEIVED INFORMAL INQUIRIES FROM GOP CONCERNING DISTRIBUTION OF STARS & STRIPES. WHEN STARS & STRIPES WAS BROUGHT IN THROUGH MANILA INTERNATIONAL AIRPORT BY COMMERCIAL AIRLINES INSTEAD OF BY MILITARY AIRCRAFT TO CLARK, GOP OFFICIALS INDICATED THAT IN FUTURE, NEWSPAPER WOULD HAVE TO BE REVIEWED FOR EDITORIAL CONTENT BEFORE IT COULD BE RELEASED. TO AVOID PROBLEM, IMPORTATION OF STARS & STRIPES REVERTED BACK TO CLARK (SEE CINCPAC MSG 21035Z MAR 75; MANILA 75-3640; CINCPAC MSG 262329Z MAR 75). WITH THIS BACKGROUND
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BELIEVE ESSENTIAL TO CLARIFY OUR RIGHTS IN THESE AREAS, ESPECIALLY IN VIEW OF FACT THAT GOP CUSTOMS WILL BE OPERATING ON BASES. CONCERNING SCHOOLS, NO REAL ISSUE HAS DEVELOPED EXCEPT LABOR UNION INFORMALLY QUESTIONED NEED OF U.S. GOVERNMENT TO IMPORT U.S. TEACHERS WHEN PHILIPPINES COULD EASILY SUPPLY COMPETENT ENGLISH SPEAKING SCHOOL TEACHERS FOR DOD SCHOOL SYSTEM HERE. PHILIPPINE CONSTITUTION SPECIFICALLY STIPULATES THAT ALL EDUCATIONAL INSTITUTIONS WILL BE SUBJECT TO SUPERVISION AND REGULATION OF THE STATE (SEE ARTICLE XV, SECTION 8). ALTHOUGH IT EXEMPTS "...SCHOOLS ESTABLISHED FOR FOREIGN DIPLOMATIC PERSONNEL AND THEIR DEPENDENTS AND, UNLESS OTHERWISE PROVIDED BY LAW, FOR OTHER FOREIGN TEMPORARY RESIDENTS.", WORDING IS SO IMPRECISE THAT SPECIFIC ARRANGEMENTS FOR BASE SCHOOLS ARE REQUIRED IN NEW AGREEMENT. THERE IS ADDITIONAL POTENTIAL PROBLEM

THAT GOP HAS ISSUED NEW DECREE ON OPERATION OF "PRIVATE" SCHOOLS, WHICH IT MAY ATTEMPT TO APPLY TO ANY SCHOOL SYSTEM IT DOES NOT OPERATE OR OTHERWISE PROVIDE FOR IN SPECIAL LEGISLATION OR AGREEMENTS.

9. PARA 6 (ARTICLE V - TERM OF AGREEMENT):

THE PRECEDENT IS SO VISIBLY AND ATTRACTIVELY ESTABLISHED IN THE SPANISH PACKAGE THAT THERE IS ALMOST NO RPT NO CHANCE THAT THE GOP WOULD LET US GET AWAY WITH LESS THAN AUTOMATIC PERIODIC REVIEW OF THE AGREEMENT AND ITS ANNEXES. WE WOULD AGREE THAT IT IS PROBABLY WORTH A TRY TO PRESERVE THE CURRENT ARRANGEMENTS BUT WE ARE VERY PESSIMISTIC ABOUT THE PROSPECTS FOR SUCCESS. THERE IS A FURTHER POINT THAT NEGOTIATING THE QUID PRO QUO EVERY 5 OR 10 YEARS MAY BE PREFERABLE TO NEGOTIATING EVERY YEAR.
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